

109TH CONGRESS
1ST SESSION

S. 256

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,*

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

5 (a) SHORT TITLE.—This Act may be cited as the
6 “Bankruptcy Abuse Prevention and Consumer Protection
7 Act of 2005”.

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

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

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- Sec. 101. Conversion.
- Sec. 102. Dismissal or conversion.
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- Sec. 105. Debtor financial management training test program.
- Sec. 106. Credit counseling.
- Sec. 107. Schedules of reasonable and necessary expenses.

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- Sec. 201. Promotion of alternative dispute resolution.
- Sec. 202. Effect of discharge.
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- Sec. 216. Continued liability of property.
- Sec. 217. Protection of domestic support claims against preferential transfer motions.
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- Sec. 231. Protection of personally identifiable information.
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**TITLE I—NEEDS-BASED
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)”;

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

18 (i) in the first sentence—

19 (I) by striking “but not at the re-
20 quest or suggestion of” and inserting

1 “trustee (or bankruptcy adminis-
2 trator, if any), or”;

3 (II) by inserting “, or, with the
4 debtor’s consent, convert such a case
5 to a case under chapter 11 or 13 of
6 this title,” after “consumer debts”;
7 and

8 (III) by striking “a substantial
9 abuse” and inserting “an abuse”; and

10 (ii) by striking the next to last sen-
11 tence; and

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

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

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

22 “(II) \$10,000.

23 “(ii)(I) The debtor’s monthly expenses shall be the
24 debtor’s applicable monthly expense amounts specified
25 under the National Standards and Local Standards, and

1 the debtor's actual monthly expenses for the categories
2 specified as Other Necessary Expenses issued by the In-
3 ternal Revenue Service for the area in which the debtor
4 resides, as in effect on the date of the order for relief,
5 for the debtor, the dependents of the debtor, and the
6 spouse of the debtor in a joint case, if the spouse is not
7 otherwise a dependent. Such expenses shall include rea-
8 sonably necessary health insurance, disability insurance,
9 and health savings account expenses for the debtor, the
10 spouse of the debtor, or the dependents of the debtor. Not-
11 withstanding any other provision of this clause, the
12 monthly expenses of the debtor shall not include any pay-
13 ments for debts. In addition, the debtor's monthly ex-
14 penses shall include the debtor's reasonably necessary ex-
15 penses incurred to maintain the safety of the debtor and
16 the family of the debtor from family violence as identified
17 under section 309 of the Family Violence Prevention and
18 Services Act, or other applicable Federal law. The ex-
19 penses included in the debtor's monthly expenses de-
20 scribed in the preceding sentence shall be kept confidential
21 by the court. In addition, if it is demonstrated that it is
22 reasonable and necessary, the debtor's monthly expenses
23 may also include an additional allowance for food and
24 clothing of up to 5 percent of the food and clothing cat-

1 egories as specified by the National Standards issued by
2 the Internal Revenue Service.

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

13 “(III) In addition, for a debtor eligible for chapter
14 13, the debtor’s monthly expenses may include the actual
15 administrative expenses of administering a chapter 13
16 plan for the district in which the debtor resides, up to an
17 amount of 10 percent of the projected plan payments, as
18 determined under schedules issued by the Executive Office
19 for United States Trustees.

20 “(IV) In addition, the debtor’s monthly expenses may
21 include the actual expenses for each dependent child less
22 than 18 years of age, not to exceed \$1,500 per year per
23 child, to attend a private or public elementary or sec-
24 ondary school if the debtor provides documentation of such
25 expenses and a detailed explanation of why such expenses

1 are reasonable and necessary, and why such expenses are
2 not already accounted for in the National Standards,
3 Local Standards, or Other Necessary Expenses referred
4 to in subclause (I).

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

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

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

18 “(II) any additional payments to secured credi-
19 tors necessary for the debtor, in filing a plan under
20 chapter 13 of this title, to maintain possession of the
21 debtor’s primary residence, motor vehicle, or other
22 property necessary for the support of the debtor and
23 the debtor’s dependents, that serves as collateral for
24 secured debts;

25 divided by 60.

1 “(iv) The debtor’s expenses for payment of all pri-
2 ority claims (including priority child support and alimony
3 claims) shall be calculated as the total amount of debts
4 entitled to priority, divided by 60.

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

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

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

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

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

24 “(iv) The presumption of abuse may only be rebutted
25 if the additional expenses or adjustments to income re-

1 ferred to in clause (i) cause the product of the debtor’s
2 current monthly income reduced by the amounts deter-
3 mined under clauses (ii), (iii), and (iv) of subparagraph
4 (A) when multiplied by 60 to be less than the lesser of—

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

7 “(II) \$10,000.

8 “(C) As part of the schedule of current income and
9 expenditures required under section 521, the debtor shall
10 include a statement of the debtor’s current monthly in-
11 come, and the calculations that determine whether a pre-
12 sumption arises under subparagraph (A)(i), that show how
13 each such amount is calculated.

14 “(D) Subparagraphs (A) through (C) shall not apply,
15 and the court may not dismiss or convert a case based
16 on any form of means testing, if the debtor is a disabled
17 veteran (as defined in section 3741(1) of title 38), and
18 the indebtedness occurred primarily during a period dur-
19 ing which he or she was—

20 “(i) on active duty (as defined in section
21 101(d)(1) of title 10); or

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

24 “(3) In considering under paragraph (1) whether the
25 granting of relief would be an abuse of the provisions of

1 this chapter in a case in which the presumption in sub-
2 paragraph (A)(i) of such paragraph does not arise or is
3 rebutted, the court shall consider—

4 “(A) whether the debtor filed the petition in
5 bad faith; or

6 “(B) the totality of the circumstances (includ-
7 ing whether the debtor seeks to reject a personal
8 services contract and the financial need for such re-
9 jection as sought by the debtor) of the debtor’s fi-
10 nancial situation demonstrates abuse.

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

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

20 “(ii) the court—

21 “(I) grants such motion; and

22 “(II) finds that the action of the attorney
23 for the debtor in filing a case under this chap-
24 ter violated rule 9011 of the Federal Rules of
25 Bankruptcy Procedure.

1 “(B) If the court finds that the attorney for the debt-
2 or violated rule 9011 of the Federal Rules of Bankruptcy
3 Procedure, the court, on its own initiative or on the motion
4 of a party in interest, in accordance with such procedures,
5 may order—

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

8 “(ii) the payment of such civil penalty to the
9 trustee, the United States trustee (or the bank-
10 ruptcy administrator, if any).

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

14 “(i) performed a reasonable investigation into
15 the circumstances that gave rise to the petition,
16 pleading, or written motion; and

17 “(ii) determined that the petition, pleading, or
18 written motion—

19 “(I) is well grounded in fact; and

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

24 “(D) The signature of an attorney on the petition
25 shall constitute a certification that the attorney has no

1 knowledge after an inquiry that the information in the
2 schedules filed with such petition is incorrect.

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

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

13 “(ii) the court finds that—

14 “(I) the position of the party that filed the
15 motion violated rule 9011 of the Federal Rules
16 of Bankruptcy Procedure; or

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

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

1 “(C) For purposes of this paragraph—

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

5 “(I) has fewer than 25 full-time employees
6 as determined on the date on which the motion
7 is filed; and

8 “(II) is engaged in commercial or business
9 activity; and

10 “(ii) the number of employees of a wholly
11 owned subsidiary of a corporation includes the em-
12 ployees of—

13 “(I) a parent corporation; and

14 “(II) any other subsidiary corporation of
15 the parent corporation.

16 “(6) Only the judge or United States trustee (or
17 bankruptcy administrator, if any) may file a motion under
18 section 707(b), if the current monthly income of the debt-
19 or, or in a joint case, the debtor and the debtor’s spouse,
20 as of the date of the order for relief, when multiplied by
21 12, is equal to or less than—

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

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

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

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

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

20 “(ii) in the case of a debtor in a household of
21 2, 3, or 4 individuals, the highest median family in-
22 come of the applicable State for a family of the same
23 number or fewer individuals; or

24 “(iii) in the case of a debtor in a household ex-
25 ceeding 4 individuals, the highest median family in-

1 come of the applicable State for a family of 4 or
 2 fewer individuals, plus \$525 per month for each in-
 3 dividual in excess of 4.

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

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

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

12 “(ii) the debtor files a statement under penalty
 13 of perjury—

14 “(I) specifying that the debtor meets the
 15 requirement of subclause (I) or (II) of clause
 16 (i); and

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

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

25 “(10A) ‘current monthly income’—

1 “(A) means the average monthly income
2 from all sources that the debtor receives (or in
3 a joint case the debtor and the debtor’s spouse
4 receive) without regard to whether such income
5 is taxable income, derived during the 6-month
6 period ending on—

7 “(i) the last day of the calendar
8 month immediately preceding the date of
9 the commencement of the case if the debt-
10 or files the schedule of current income re-
11 quired by section 521(a)(1)(B)(ii); or

12 “(ii) the date on which current income
13 is determined by the court for purposes of
14 this title if the debtor does not file the
15 schedule of current income required by sec-
16 tion 521(a)(1)(B)(ii); and

17 “(B) includes any amount paid by any en-
18 tity other than the debtor (or in a joint case the
19 debtor and the debtor’s spouse), on a regular
20 basis for the household expenses of the debtor
21 or the debtor’s dependents (and in a joint case
22 the debtor’s spouse if not otherwise a depend-
23 ent), but excludes benefits received under the
24 Social Security Act, payments to victims of war
25 crimes or crimes against humanity on account

1 of their status as victims of such crimes, and
2 payments to victims of international terrorism
3 (as defined in section 2331 of title 18) or do-
4 mestic terrorism (as defined in section 2331 of
5 title 18) on account of their status as victims
6 of such terrorism;”.

7 (c) UNITED STATES TRUSTEE AND BANKRUPTCY
8 ADMINISTRATOR DUTIES.—Section 704 of title 11, United
9 States Code, is amended—

10 (1) by inserting “(a)” before “The trustee
11 shall—”; and

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

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

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

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

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

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

16 “(B) in the case of a debtor in a household of
17 2 or more individuals, the highest median family in-
18 come of the applicable State for a family of the same
19 number or fewer individuals.”.

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

22 “(d) In a case under chapter 7 of this title in which
23 the debtor is an individual and in which the presumption
24 of abuse arises under section 707(b), the clerk shall give
25 written notice to all creditors not later than 10 days after

1 the date of the filing of the petition that the presumption
2 of abuse has arisen.”.

3 (e) NONLIMITATION OF INFORMATION.—Nothing in
4 this title shall limit the ability of a creditor to provide in-
5 formation to a judge (except for information commu-
6 nicated ex parte, unless otherwise permitted by applicable
7 law), United States trustee (or bankruptcy administrator,
8 if any), or trustee.

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

12 “(c)(1) In this subsection—

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

15 “(B) the term ‘drug trafficking crime’ has the
16 meaning given such term in section 924(c)(2) of title
17 18.

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

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

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

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

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

12 (3) by inserting after paragraph (6) the fol-
13 lowing:

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

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

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

21 (2) by striking paragraph (2) and inserting the
22 following:

23 “(2) For purposes of this subsection, the term
24 ‘disposable income’ means current monthly income
25 received by the debtor (other than child support pay-

1 ments, foster care payments, or disability payments
2 for a dependent child made in accordance with appli-
3 cable nonbankruptcy law to the extent reasonably
4 necessary to be expended for such child) less
5 amounts reasonably necessary to be expended—

6 “(A)(i) for the maintenance or support of
7 the debtor or a dependent of the debtor, or for
8 a domestic support obligation, that first be-
9 comes payable after the date the petition is
10 filed; and

11 “(ii) for charitable contributions (that
12 meet the definition of ‘charitable contribution’
13 under section 548(d)(3) to a qualified religious
14 or charitable entity or organization (as defined
15 in section 548(d)(4)) in an amount not to ex-
16 ceed 15 percent of gross income of the debtor
17 for the year in which the contributions are
18 made; and

19 “(B) if the debtor is engaged in business,
20 for the payment of expenditures necessary for
21 the continuation, preservation, and operation of
22 such business.

23 “(3) Amounts reasonably necessary to be ex-
24 pended under paragraph (2) shall be determined in
25 accordance with subparagraphs (A) and (B) of sec-

1 tion 707(b)(2), if the debtor has current monthly in-
2 come, when multiplied by 12, greater than—

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

6 “(B) in the case of a debtor in a household
7 of 2, 3, or 4 individuals, the highest median
8 family income of the applicable State for a fam-
9 ily of the same number or fewer individuals; or

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

15 (i) SPECIAL ALLOWANCE FOR HEALTH INSUR-
16 ANCE.—Section 1329(a) of title 11, United States Code,
17 is amended—

18 (1) in paragraph (2) by striking “or” at the
19 end;

20 (2) in paragraph (3) by striking the period at
21 the end and inserting “; or”; and

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

23 “(4) reduce amounts to be paid under the plan
24 by the actual amount expended by the debtor to pur-
25 chase health insurance for the debtor (and for any

1 dependent of the debtor if such dependent does not
2 otherwise have health insurance coverage) if the
3 debtor documents the cost of such insurance and
4 demonstrates that—

5 “(A) such expenses are reasonable and
6 necessary;

7 “(B)(i) if the debtor previously paid for
8 health insurance, the amount is not materially
9 larger than the cost the debtor previously paid
10 or the cost necessary to maintain the lapsed
11 policy; or

12 “(ii) if the debtor did not have health in-
13 surance, the amount is not materially larger
14 than the reasonable cost that would be incurred
15 by a debtor who purchases health insurance,
16 who has similar income, expenses, age, and
17 health status, and who lives in the same geo-
18 graphical location with the same number of de-
19 pendents who do not otherwise have health in-
20 surance coverage; and

21 “(C) the amount is not otherwise allowed
22 for purposes of determining disposable income
23 under section 1325(b) of this title;

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

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

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

8 “(39A) ‘median family income’ means for any
 9 year—

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

13 “(B) if not so calculated and reported in
 14 the then current year, adjusted annually after
 15 such most recent year until the next year in
 16 which median family income is both calculated
 17 and reported by the Bureau of the Census, to
 18 reflect the percentage change in the Consumer
 19 Price Index for All Urban Consumers during
 20 the period of years occurring after such most
 21 recent year and before such current year;”.

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

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

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

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

8 (b) STUDY.—

9 (1) IN GENERAL.—Not later than 2 years after
10 the date of enactment of this Act, the Director of
11 the Executive Office for United States Trustees shall
12 submit a report to the Committee on the Judiciary
13 of the Senate and the Committee on the Judiciary
14 of the House of Representatives containing the find-
15 ings of the Director regarding the utilization of In-
16 ternal Revenue Service standards for determining—

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

20 (B) the impact that the application of such
21 standards has had on debtors and on the bank-
22 ruptcy courts.

23 (2) RECOMMENDATION.—The report under
24 paragraph (1) may include recommendations for
25 amendments to title 11, United States Code, that

1 are consistent with the findings of the Director
2 under paragraph (1).

3 **SEC. 104. NOTICE OF ALTERNATIVES.**

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

6 “(b) Before the commencement of a case under this
7 title by an individual whose debts are primarily consumer
8 debts, the clerk shall give to such individual written notice
9 containing—

10 “(1) a brief description of—

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

14 “(B) the types of services available from
15 credit counseling agencies; and

16 “(2) statements specifying that—

17 “(A) a person who knowingly and fraudu-
18 lently conceals assets or makes a false oath or
19 statement under penalty of perjury in connec-
20 tion with a case under this title shall be subject
21 to fine, imprisonment, or both; and

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

1 **SEC. 105. DEBTOR FINANCIAL MANAGEMENT TRAINING**
2 **TEST PROGRAM.**

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

15 (b) TEST.—

16 (1) SELECTION OF DISTRICTS.—The Director
17 shall select 6 judicial districts of the United States
18 in which to test the effectiveness of the financial
19 management training curriculum and materials de-
20 veloped under subsection (a).

21 (2) USE.—For an 18-month period beginning
22 not later than 270 days after the date of the enact-
23 ment of this Act, such curriculum and materials
24 shall be, for the 6 judicial districts selected under
25 paragraph (1), used as the instructional course con-

1 cerning personal financial management for purposes
2 of section 111 of title 11, United States Code.

3 (c) EVALUATION.—

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

7 (A) the financial management training cur-
8 riculum and materials developed under sub-
9 section (a); and

10 (B) a sample of existing consumer edu-
11 cation programs such as those described in the
12 Report of the National Bankruptcy Review
13 Commission (October 20, 1997) that are rep-
14 resentative of consumer education programs
15 carried out by the credit industry, by trustees
16 serving under chapter 13 of title 11, United
17 States Code, and by consumer counseling
18 groups.

19 (2) REPORT.—Not later than 3 months after
20 concluding such evaluation, the Director shall sub-
21 mit a report to the Speaker of the House of Rep-
22 resentatives and the President pro tempore of the
23 Senate, for referral to the appropriate committees of
24 the Congress, containing the findings of the Director

1 regarding the effectiveness of such curriculum, such
2 materials, and such programs and their costs.

3 **SEC. 106. CREDIT COUNSELING.**

4 (a) WHO MAY BE A DEBTOR.—Section 109 of title
5 11, United States Code, is amended by adding at the end
6 the following:

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

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

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

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

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

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

21 “(iii) is satisfactory to the court.

22 “(B) With respect to a debtor, an exemption under
23 subparagraph (A) shall cease to apply to that debtor on
24 the date on which the debtor meets the requirements of
25 paragraph (1), but in no case may the exemption apply

1 to that debtor after the date that is 30 days after the debt-
2 or files a petition, except that the court, for cause, may
3 order an additional 15 days.

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

17 (b) CHAPTER 7 DISCHARGE.—Section 727(a) of title
18 11, United States Code, is amended—

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

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

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

24 “(11) after filing the petition, the debtor failed
25 to complete an instructional course concerning per-

1 sonal financial management described in section
2 111, except that this paragraph shall not apply with
3 respect to a debtor who is a person described in sec-
4 tion 109(h)(4) or who resides in a district for which
5 the United States trustee (or the bankruptcy admin-
6 istrator, if any) determines that the approved in-
7 structional courses are not adequate to service the
8 additional individuals who would otherwise be re-
9 quired to complete such instructional courses under
10 this section (The United States trustee (or the bank-
11 ruptcy administrator, if any) who makes a deter-
12 mination described in this paragraph shall review
13 such determination not later than 1 year after the
14 date of such determination, and not less frequently
15 than annually thereafter.).”.

16 (c) CHAPTER 13 DISCHARGE.—Section 1328 of title
17 11, United States Code, is amended by adding at the end
18 the following:

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

23 “(2) Paragraph (1) shall not apply with respect to
24 a debtor who is a person described in section 109(h)(4)
25 or who resides in a district for which the United States

1 trustee (or the bankruptcy administrator, if any) deter-
2 mines that the approved instructional courses are not ade-
3 quate to service the additional individuals who would oth-
4 erwise be required to complete such instructional course
5 by reason of the requirements of paragraph (1).

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

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

13 (1) by inserting “(a)” before “The debtor
14 shall—”; and

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

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

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

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

1 proved nonprofit budget and credit counseling agen-
2 cy referred to in paragraph (1).”

3 (e) GENERAL PROVISIONS.—

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

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

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

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

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

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

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

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

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

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

1 and for successive 1-year periods thereafter, an
2 agency or instructional course that has dem-
3 onstrated during the probationary or applicable sub-
4 sequent period of approval that such agency or in-
5 structional course—

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

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

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

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

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

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

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

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

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

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

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

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

1 “(F) provide trained counselors who receive no
2 commissions or bonuses based on the outcome of the
3 counseling services provided by such agency, and
4 who have adequate experience, and have been ade-
5 quately trained to provide counseling services to in-
6 dividuals in financial difficulty, including the mat-
7 ters described in subparagraph (E);

8 “(G) demonstrate adequate experience and
9 background in providing credit counseling; and

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

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

16 “(1) for an initial probationary period under
17 subsection (b)(3) if the course will provide at a
18 minimum—

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

22 “(B) learning materials and teaching
23 methodologies designed to assist debtors in un-
24 derstanding personal financial management and
25 that are consistent with stated objectives di-

1 rectly related to the goals of such instructional
2 course;

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

9 “(D) the preparation and retention of rea-
10 sonable records (which shall include the debt-
11 or’s bankruptcy case number) to permit evalua-
12 tion of the effectiveness of such instructional
13 course, including any evaluation of satisfaction
14 of instructional course requirements for each
15 debtor attending such instructional course,
16 which shall be available for inspection and eval-
17 uation by the Executive Office for United
18 States Trustees, the United States trustee (or
19 the bankruptcy administrator, if any), or the
20 chief bankruptcy judge for the district in which
21 such instructional course is offered; and

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

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

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

7 “(B) is otherwise likely to increase sub-
8 stantially the debtor’s understanding of per-
9 sonal financial management.

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

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

24 “(g)(1) No nonprofit budget and credit counseling
25 agency may provide to a credit reporting agency informa-

1 tion concerning whether a debtor has received or sought
 2 instruction concerning personal financial management
 3 from such agency.

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

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

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

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

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

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

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

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

4 **SEC. 107. SCHEDULES OF REASONABLE AND NECESSARY**
 5 **EXPENSES.**

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

13 **TITLE II—ENHANCED**
 14 **CONSUMER PROTECTION**
 15 **Subtitle A—Penalties for Abusive**
 16 **Creditor Practices**

17 **SEC. 201. PROMOTION OF ALTERNATIVE DISPUTE RESOLU-**
 18 **TION.**

19 (a) REDUCTION OF CLAIM.—Section 502 of title 11,
 20 United States Code, is amended by adding at the end the
 21 following:

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

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

6 “(B) the offer of the debtor under subpara-
7 graph (A)—

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

10 “(ii) provided for payment of at least 60
11 percent of the amount of the debt over a period
12 not to exceed the repayment period of the loan,
13 or a reasonable extension thereof; and

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

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

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

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

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

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

6 **SEC. 202. EFFECT OF DISCHARGE.**

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

9 “(i) The willful failure of a creditor to credit pay-
10 ments received under a plan confirmed under this title,
11 unless the order confirming the plan is revoked, the plan
12 is in default, or the creditor has not received payments
13 required to be made under the plan in the manner re-
14 quired by the plan (including crediting the amounts re-
15 quired under the plan), shall constitute a violation of an
16 injunction under subsection (a)(2) if the act of the creditor
17 to collect and failure to credit payments in the manner
18 required by the plan caused material injury to the debtor.

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

22 “(1) such creditor retains a security interest in
23 real property that is the principal residence of the
24 debtor;

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

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

7 **SEC. 203. DISCOURAGING ABUSE OF REAFFIRMATION**
8 **AGREEMENT PRACTICES.**

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

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

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

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

17 “(k)(1) The disclosures required under subsection
18 (c)(2) shall consist of the disclosure statement described
19 in paragraph (3), completed as required in that para-
20 graph, together with the agreement specified in subsection
21 (c), statement, declaration, motion and order described,
22 respectively, in paragraphs (4) through (8), and shall be
23 the only disclosures required in connection with entering
24 into such agreement.

1 “(2) Disclosures made under paragraph (1) shall be
2 made clearly and conspicuously and in writing. The terms
3 ‘Amount Reaffirmed’ and ‘Annual Percentage Rate’ shall
4 be disclosed more conspicuously than other terms, data or
5 information provided in connection with this disclosure,
6 except that the phrases ‘Before agreeing to reaffirm a
7 debt, review these important disclosures’ and ‘Summary
8 of Reaffirmation Agreement’ may be equally conspicuous.
9 Disclosures may be made in a different order and may
10 use terminology different from that set forth in para-
11 graphs (2) through (8), except that the terms ‘Amount
12 Reaffirmed’ and ‘Annual Percentage Rate’ must be used
13 where indicated.

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

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

19 “(B) Under the heading ‘Summary of Reaffir-
20 mation Agreement’, the statement: ‘This Summary
21 is made pursuant to the requirements of the Bank-
22 ruptcy Code’;

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

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

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

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

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

11 “(ii) ‘Your credit agreement may obligate
12 you to pay additional amounts which may come
13 due after the date of this disclosure. Consult
14 your credit agreement.’.

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

17 “(i) if, at the time the petition is filed, the
18 debt is an extension of credit under an open
19 end credit plan, as the terms ‘credit’ and ‘open
20 end credit plan’ are defined in section 103 of
21 the Truth in Lending Act, then—

22 “(I) the annual percentage rate deter-
23 mined under paragraphs (5) and (6) of
24 section 127(b) of the Truth in Lending
25 Act, as applicable, as disclosed to the debt-

1 or in the most recent periodic statement
2 prior to entering into an agreement of the
3 kind specified in subsection (c) or, if no
4 such periodic statement has been given to
5 the debtor during the prior 6 months, the
6 annual percentage rate as it would have
7 been so disclosed at the time the disclosure
8 statement is given to the debtor, or to the
9 extent this annual percentage rate is not
10 readily available or not applicable, then

11 “(II) the simple interest rate applica-
12 ble to the amount reaffirmed as of the date
13 the disclosure statement is given to the
14 debtor, or if different simple interest rates
15 apply to different balances, the simple in-
16 terest rate applicable to each such balance,
17 identifying the amount of each such bal-
18 ance included in the amount reaffirmed, or

19 “(III) if the entity making the disclo-
20 sure elects, to disclose the annual percent-
21 age rate under subclause (I) and the sim-
22 ple interest rate under subclause (II); or

23 “(ii) if, at the time the petition is filed, the
24 debt is an extension of credit other than under
25 an open end credit plan, as the terms ‘credit’

1 and ‘open end credit plan’ are defined in section
2 103 of the Truth in Lending Act, then—

3 “(I) the annual percentage rate under
4 section 128(a)(4) of the Truth in Lending
5 Act, as disclosed to the debtor in the most
6 recent disclosure statement given to the
7 debtor prior to the entering into an agree-
8 ment of the kind specified in subsection (c)
9 with respect to the debt, or, if no such dis-
10 closure statement was given to the debtor,
11 the annual percentage rate as it would
12 have been so disclosed at the time the dis-
13 closure statement is given to the debtor, or
14 to the extent this annual percentage rate is
15 not readily available or not applicable, then

16 “(II) the simple interest rate applica-
17 ble to the amount reaffirmed as of the date
18 the disclosure statement is given to the
19 debtor, or if different simple interest rates
20 apply to different balances, the simple in-
21 terest rate applicable to each such balance,
22 identifying the amount of such balance in-
23 cluded in the amount reaffirmed, or

24 “(III) if the entity making the disclo-
25 sure elects, to disclose the annual percent-

1 age rate under (I) and the simple interest
2 rate under (II).

3 “(F) If the underlying debt transaction was dis-
4 closed as a variable rate transaction on the most re-
5 cent disclosure given under the Truth in Lending
6 Act, by stating ‘The interest rate on your loan may
7 be a variable interest rate which changes from time
8 to time, so that the annual percentage rate disclosed
9 here may be higher or lower.’.

10 “(G) If the debt is secured by a security inter-
11 est which has not been waived in whole or in part
12 or determined to be void by a final order of the
13 court at the time of the disclosure, by disclosing that
14 a security interest or lien in goods or property is as-
15 serted over some or all of the debts the debtor is re-
16 affirming and listing the items and their original
17 purchase price that are subject to the asserted secu-
18 rity interest, or if not a purchase-money security in-
19 terest then listing by items or types and the original
20 amount of the loan.

21 “(H) At the election of the creditor, a state-
22 ment of the repayment schedule using 1 or a com-
23 bination of the following—

24 “(i) by making the statement: ‘Your first
25 payment in the amount of \$_____ is due on

1 _____ but the future payment amount may be
2 different. Consult your reaffirmation agreement
3 or credit agreement, as applicable.’, and stating
4 the amount of the first payment and the due
5 date of that payment in the places provided;

6 “(ii) by making the statement: ‘Your pay-
7 ment schedule will be:’, and describing the re-
8 payment schedule with the number, amount,
9 and due dates or period of payments scheduled
10 to repay the debts reaffirmed to the extent then
11 known by the disclosing party; or

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

15 “(I) The following statement: ‘Note: When this
16 disclosure refers to what a creditor “may” do, it
17 does not use the word “may” to give the creditor
18 specific permission. The word “may” is used to tell
19 you what might occur if the law permits the creditor
20 to take the action. If you have questions about your
21 reaffirming a debt or what the law requires, consult
22 with the attorney who helped you negotiate this
23 agreement reaffirming a debt. If you don’t have an
24 attorney helping you, the judge will explain the ef-

1 fect of your reaffirming a debt when the hearing on
2 the reaffirmation agreement is held.’.

3 “(J)(i) The following additional statements:

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

9 “‘1. Read the disclosures in this Part A care-
10 fully. Consider the decision to reaffirm carefully.
11 Then, if you want to reaffirm, sign the reaffirmation
12 agreement in Part B (or you may use a separate
13 agreement you and your creditor agree on).

14 “‘2. Complete and sign Part D and be sure you
15 can afford to make the payments you are agreeing
16 to make and have received a copy of the disclosure
17 statement and a completed and signed reaffirmation
18 agreement.

19 “‘3. If you were represented by an attorney
20 during the negotiation of your reaffirmation agree-
21 ment, the attorney must have signed the certification
22 in Part C.

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

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

5 “6. If you were represented by an attorney
6 during the negotiation of your reaffirmation agree-
7 ment, your reaffirmation agreement becomes effec-
8 tive upon filing with the court unless the reaffirma-
9 tion is presumed to be an undue hardship as ex-
10 plained in Part D.

11 “7. If you were not represented by an attorney
12 during the negotiation of your reaffirmation agree-
13 ment, it will not be effective unless the court ap-
14 proves it. The court will notify you of the hearing on
15 your reaffirmation agreement. You must attend this
16 hearing in bankruptcy court where the judge will re-
17 view your reaffirmation agreement. The bankruptcy
18 court must approve your reaffirmation agreement as
19 consistent with your best interests, except that no
20 court approval is required if your reaffirmation
21 agreement is for a consumer debt secured by a mort-
22 gage, deed of trust, security deed, or other lien on
23 your real property, like your home.

24 “Your right to rescind (cancel) your reaffirmation
25 agreement. You may rescind (cancel) your reaffirmation

1 agreement at any time before the bankruptcy court enters
2 a discharge order, or before the expiration of the 60-day
3 period that begins on the date your reaffirmation agree-
4 ment is filed with the court, whichever occurs later. To
5 rescind (cancel) your reaffirmation agreement, you must
6 notify the creditor that your reaffirmation agreement is
7 rescinded (or canceled).

8 “‘What are your obligations if you reaffirm the debt?
9 A reaffirmed debt remains your personal legal obligation.
10 It is not discharged in your bankruptcy case. That means
11 that if you default on your reaffirmed debt after your
12 bankruptcy case is over, your creditor may be able to take
13 your property or your wages. Otherwise, your obligations
14 will be determined by the reaffirmation agreement which
15 may have changed the terms of the original agreement.
16 For example, if you are reaffirming an open end credit
17 agreement, the creditor may be permitted by that agree-
18 ment or applicable law to change the terms of that agree-
19 ment in the future under certain conditions.

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

1 “‘What if your creditor has a security interest or
2 lien? Your bankruptcy discharge does not eliminate any
3 lien on your property. A “lien” is often referred to as a
4 security interest, deed of trust, mortgage or security deed.
5 Even if you do not reaffirm and your personal liability
6 on the debt is discharged, because of the lien your creditor
7 may still have the right to take the security property if
8 you do not pay the debt or default on it. If the lien is
9 on an item of personal property that is exempt under your
10 State’s law or that the trustee has abandoned, you may
11 be able to redeem the item rather than reaffirm the debt.
12 To redeem, you make a single payment to the creditor
13 equal to the current value of the security property, as
14 agreed by the parties or determined by the court.’.

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

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.’.

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

1 “Part B: Reaffirmation Agreement. I (we) agree to
2 reaffirm the debts arising under the credit agreement de-
3 scribed below.

4 “Brief description of credit agreement:

5 “Description of any changes to the credit agreement
6 made as part of this reaffirmation agreement:

7 “Signature: Date:

8 “Borrower:

9 “Co-borrower, if also reaffirming these debts:

10 “Accepted by creditor:

11 “Date of creditor acceptance:’.

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

13 “(A) The following certification:

14 “Part C: Certification by Debtor’s Attorney (If
15 Any).

16 “‘I hereby certify that (1) this agreement represents

17 a fully informed and voluntary agreement by the debtor;

18 (2) this agreement does not impose an undue hardship on

19 the debtor or any dependent of the debtor; and (3) I have

20 fully advised the debtor of the legal effect and con-

21 sequences of this agreement and any default under this

22 agreement.

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

24 “(B) If a presumption of undue hardship has

25 been established with respect to such agreement,

1 such certification shall state that in the opinion of
2 the attorney, the debtor is able to make the pay-
3 ment.

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

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

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

11 “‘1. I believe this reaffirmation agreement will not
12 impose an undue hardship on my dependents or me. I can
13 afford to make the payments on the reaffirmed debt be-
14 cause my monthly income (take home pay plus any other
15 income received) is \$_____, and my actual current
16 monthly expenses including monthly payments on post-
17 bankruptcy debt and other reaffirmation agreements total
18 \$_____, leaving \$_____ to make the required payments
19 on this reaffirmed debt. I understand that if my income
20 less my monthly expenses does not leave enough to make
21 the payments, this reaffirmation agreement is presumed
22 to be an undue hardship on me and must be reviewed by
23 the court. However, this presumption may be overcome if
24 I explain to the satisfaction of the court how I can afford
25 to make the payments here: _____.

1 “‘2. I received a copy of the Reaffirmation Disclosure
2 Statement in Part A and a completed and signed reaffir-
3 mation agreement.’.

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

10 “‘I believe this reaffirmation agreement is in my fi-
11 nancial interest. I can afford to make the payments on
12 the reaffirmed debt. I received a copy of the Reaffirmation
13 Disclosure Statement in Part A and a completed and
14 signed reaffirmation agreement.’.

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

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

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

1 “I believe this reaffirmation agreement is in my best
2 interest based on the income and expenses I have disclosed
3 in my Statement in Support of this reaffirmation agree-
4 ment, and because (provide any additional relevant rea-
5 sons the court should consider):

6 “Therefore, I ask the court for an order approving
7 this reaffirmation agreement.’.

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

10 “‘Court Order: The court grants the debtor’s motion
11 and approves the reaffirmation agreement described
12 above.’.

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

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

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

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

24 “(m)(1) Until 60 days after an agreement of the kind
25 specified in subsection (c) is filed with the court (or such

1 additional period as the court, after notice and a hearing
2 and for cause, orders before the expiration of such period),
3 it shall be presumed that such agreement is an undue
4 hardship on the debtor if the debtor's monthly income less
5 the debtor's monthly expenses as shown on the debtor's
6 completed and signed statement in support of such agree-
7 ment required under subsection (k)(6)(A) is less than the
8 scheduled payments on the reaffirmed debt. This pre-
9 sumption shall be reviewed by the court. The presumption
10 may be rebutted in writing by the debtor if the statement
11 includes an explanation that identifies additional sources
12 of funds to make the payments as agreed upon under the
13 terms of such agreement. If the presumption is not rebut-
14 ted to the satisfaction of the court, the court may dis-
15 approve such agreement. No agreement shall be dis-
16 approved without notice and a hearing to the debtor and
17 creditor, and such hearing shall be concluded before the
18 entry of the debtor's discharge.

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

22 (b) LAW ENFORCEMENT.—

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

1 **“§ 158. Designation of United States attorneys and**
2 **agents of the Federal Bureau of Inves-**
3 **tigation to address abusive reaffirma-**
4 **tions of debt and materially fraudulent**
5 **statements in bankruptcy schedules**

6 “(a) IN GENERAL.—The Attorney General of the
7 United States shall designate the individuals described in
8 subsection (b) to have primary responsibility in carrying
9 out enforcement activities in addressing violations of sec-
10 tion 152 or 157 relating to abusive reaffirmations of debt.
11 In addition to addressing the violations referred to in the
12 preceding sentence, the individuals described under sub-
13 section (b) shall address violations of section 152 or 157
14 relating to materially fraudulent statements in bankruptcy
15 schedules that are intentionally false or intentionally mis-
16 leading.

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

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

22 “(2) an agent of the Federal Bureau of Inves-
23 tigation for each field office of the Federal Bureau
24 of Investigation.

25 “(c) BANKRUPTCY INVESTIGATIONS.—Each United
26 States attorney designated under this section shall, in ad-

1 dition to any other responsibilities, have primary responsi-
 2 bility for carrying out the duties of a United States attor-
 3 ney under section 3057.

4 “(d) BANKRUPTCY PROCEDURES.—The bankruptcy
 5 courts shall establish procedures for referring any case
 6 that may contain a materially fraudulent statement in a
 7 bankruptcy schedule to the individuals designated under
 8 this section.”.

9 (2) CLERICAL AMENDMENT.—The table of sec-
 10 tions for chapter 9 of title 18, United States Code,
 11 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.”.

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

14 Section 363 of title 11, United States Code, is
 15 amended—

16 (1) by redesignating subsection (o) as sub-
 17 section (p), and

18 (2) by inserting after subsection (n) the fol-
 19 lowing:

20 “(o) Notwithstanding subsection (f), if a person pur-
 21 chases any interest in a consumer credit transaction that
 22 is subject to the Truth in Lending Act or any interest in
 23 a consumer credit contract (as defined in section 433.1
 24 of title 16 of the Code of Federal Regulations (January

1 1, 2004), as amended from time to time), and if such in-
2 terest is purchased through a sale under this section, then
3 such person shall remain subject to all claims and defenses
4 that are related to such consumer credit transaction or
5 such consumer credit contract, to the same extent as such
6 person would be subject to such claims and defenses of
7 the consumer had such interest been purchased at a sale
8 not under this section.”.

9 **SEC. 205. GAO STUDY AND REPORT ON REAFFIRMATION**
10 **AGREEMENT PROCESS.**

11 (a) **STUDY.**—The Comptroller General of the United
12 States shall conduct a study of the reaffirmation agree-
13 ment process that occurs under title 11 of the United
14 States Code, to determine the overall treatment of con-
15 sumers within the context of such process, and shall in-
16 clude in such study consideration of—

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

19 (2) whether consumers are fully, fairly, and
20 consistently informed of their rights pursuant to
21 such title.

22 (b) **REPORT TO THE CONGRESS.**—Not later than 18
23 months after the date of the enactment of this Act, the
24 Comptroller General shall submit to the President pro
25 tempore of the Senate and the Speaker of the House of

1 Representatives a report on the results of the study con-
 2 ducted under subsection (a), together with recommenda-
 3 tions for legislation (if any) to address any abusive or co-
 4 ercive tactics found in connection with the reaffirmation
 5 agreement process that occurs under title 11 of the United
 6 States Code.

7 **Subtitle B—Priority Child Support**

8 **SEC. 211. DEFINITION OF DOMESTIC SUPPORT OBLIGA-** 9 **TION.**

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

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

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

15 “(14A) ‘domestic support obligation’ means a
 16 debt that accrues before, on, or after the date of the
 17 order for relief in a case under this title, including
 18 interest that accrues on that debt as provided under
 19 applicable nonbankruptcy law notwithstanding any
 20 other provision of this title, that is—

21 “(A) owed to or recoverable by—

22 “(i) a spouse, former spouse, or child
 23 of the debtor or such child’s parent, legal
 24 guardian, or responsible relative; or

25 “(ii) a governmental unit;

1 “(B) in the nature of alimony, mainte-
2 nance, or support (including assistance provided
3 by a governmental unit) of such spouse, former
4 spouse, or child of the debtor or such child’s
5 parent, without regard to whether such debt is
6 expressly so designated;

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

11 “(i) a separation agreement, divorce
12 decree, or property settlement agreement;

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

14 “(iii) a determination made in accord-
15 ance with applicable nonbankruptcy law by
16 a governmental unit; and

17 “(D) not assigned to a nongovernmental
18 entity, unless that obligation is assigned volun-
19 tarily by the spouse, former spouse, child of the
20 debtor, or such child’s parent, legal guardian,
21 or responsible relative for the purpose of col-
22 lecting the debt;”.

1 **SEC. 212. PRIORITIES FOR CLAIMS FOR DOMESTIC SUP-**
2 **PORT OBLIGATIONS.**

3 Section 507(a) of title 11, United States Code, is
4 amended—

5 (1) by striking paragraph (7);

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

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

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

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

13 (A) by striking “Third” and inserting
14 “Fourth”; and

15 (B) by striking the semicolon at the end
16 and inserting a period;

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

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

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

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

25 “(1) First:

1 “(A) Allowed unsecured claims for domes-
2 tic support obligations that, as of the date of
3 the filing of the petition in a case under this
4 title, are owed to or recoverable by a spouse,
5 former spouse, or child of the debtor, or such
6 child’s parent, legal guardian, or responsible
7 relative, without regard to whether the claim is
8 filed by such person or is filed by a govern-
9 mental unit on behalf of such person, on the
10 condition that funds received under this para-
11 graph by a governmental unit under this title
12 after the date of the filing of the petition shall
13 be applied and distributed in accordance with
14 applicable nonbankruptcy law.

15 “(B) Subject to claims under subpara-
16 graph (A), allowed unsecured claims for domes-
17 tic support obligations that, as of the date of
18 the filing of the petition, are assigned by a
19 spouse, former spouse, child of the debtor, or
20 such child’s parent, legal guardian, or respon-
21 sible relative to a governmental unit (unless
22 such obligation is assigned voluntarily by the
23 spouse, former spouse, child, parent, legal
24 guardian, or responsible relative of the child for
25 the purpose of collecting the debt) or are owed

1 directly to or recoverable by a governmental
2 unit under applicable nonbankruptcy law, on
3 the condition that funds received under this
4 paragraph by a governmental unit under this
5 title after the date of the filing of the petition
6 be applied and distributed in accordance with
7 applicable nonbankruptcy law.

8 “(C) If a trustee is appointed or elected
9 under section 701, 702, 703, 1104, 1202, or
10 1302, the administrative expenses of the trustee
11 allowed under paragraphs (1)(A), (2), and (6)
12 of section 503(b) shall be paid before payment
13 of claims under subparagraphs (A) and (B), to
14 the extent that the trustee administers assets
15 that are otherwise available for the payment of
16 such claims.”.

17 **SEC. 213. REQUIREMENTS TO OBTAIN CONFIRMATION AND**
18 **DISCHARGE IN CASES INVOLVING DOMESTIC**
19 **SUPPORT OBLIGATIONS.**

20 Title 11, United States Code, is amended—

21 (1) in section 1129(a), by adding at the end the
22 following:

23 “(14) If the debtor is required by a judicial or
24 administrative order, or by statute, to pay a domes-
25 tic support obligation, the debtor has paid all

1 amounts payable under such order or such statute
2 for such obligation that first become payable after
3 the date of the filing of the petition.”;

4 (2) in section 1208(c)—

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

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

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

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

13 (3) in section 1222(a)—

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

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

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

19 “(4) notwithstanding any other provision of this
20 section, a plan may provide for less than full pay-
21 ment of all amounts owed for a claim entitled to pri-
22 ority under section 507(a)(1)(B) only if the plan
23 provides that all of the debtor’s projected disposable
24 income for a 5-year period beginning on the date

1 that the first payment is due under the plan will be
2 applied to make payments under the plan.”;

3 (4) in section 1222(b)—

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

6 (B) by redesignating paragraph (11) as
7 paragraph (12); and

8 (C) by inserting after paragraph (10) the
9 following:

10 “(11) provide for the payment of interest accru-
11 ing after the date of the filing of the petition on un-
12 secured claims that are nondischargeable under sec-
13 tion 1228(a), except that such interest may be paid
14 only to the extent that the debtor has disposable in-
15 come available to pay such interest after making
16 provision for full payment of all allowed claims;
17 and”;

18 (5) in section 1225(a)—

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

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

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

24 “(7) the debtor has paid all amounts that are
25 required to be paid under a domestic support obliga-

1 tion and that first become payable after the date of
2 the filing of the petition if the debtor is required by
3 a judicial or administrative order, or by statute, to
4 pay such domestic support obligation.”;

5 (6) in section 1228(a), in the matter preceding
6 paragraph (1), by inserting “, and in the case of a
7 debtor who is required by a judicial or administra-
8 tive order, or by statute, to pay a domestic support
9 obligation, after such debtor certifies that all
10 amounts payable under such order or such statute
11 that are due on or before the date of the certifi-
12 cation (including amounts due before the petition
13 was filed, but only to the extent provided for by the
14 plan) have been paid” after “completion by the debt-
15 or of all payments under the plan”;

16 (7) in section 1307(c)—

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

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

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

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

25 (8) in section 1322(a)—

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

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

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

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

14 (9) in section 1322(b)—

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

17 (B) by redesignating paragraph (10) as
18 paragraph (11); and

19 (C) inserting after paragraph (9) the fol-
20 lowing:

21 “(10) provide for the payment of interest accru-
22 ing after the date of the filing of the petition on un-
23 secured claims that are nondischargeable under sec-
24 tion 1328(a), except that such interest may be paid
25 only to the extent that the debtor has disposable in-

1 come available to pay such interest after making
2 provision for full payment of all allowed claims;
3 and”;

4 (10) in section 1325(a), as amended by section
5 102, by inserting after paragraph (7) the following:

6 “(8) the debtor has paid all amounts that are
7 required to be paid under a domestic support obliga-
8 tion and that first become payable after the date of
9 the filing of the petition if the debtor is required by
10 a judicial or administrative order, or by statute, to
11 pay such domestic support obligation; and”;

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

1 **SEC. 214. EXCEPTIONS TO AUTOMATIC STAY IN DOMESTIC**
2 **SUPPORT OBLIGATION PROCEEDINGS.**

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

6 “(2) under subsection (a)—

7 “(A) of the commencement or continuation
8 of a civil action or proceeding—

9 “(i) for the establishment of paternity;

10 “(ii) for the establishment or modi-
11 fication of an order for domestic support
12 obligations;

13 “(iii) concerning child custody or visi-
14 tation;

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

19 “(v) regarding domestic violence;

20 “(B) of the collection of a domestic sup-
21 port obligation from property that is not prop-
22 erty of the estate;

23 “(C) with respect to the withholding of in-
24 come that is property of the estate or property
25 of the debtor for payment of a domestic support

1 obligation under a judicial or administrative
2 order or a statute;

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

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

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

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

19 **SEC. 215. NONDISCHARGEABILITY OF CERTAIN DEBTS FOR**
20 **ALIMONY, MAINTENANCE, AND SUPPORT.**

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

23 (1) in subsection (a)—

24 (A) by striking paragraph (5) and insert-
25 ing the following:

- 1 “(5) for a domestic support obligation;”; and
2 (B) by striking paragraph (18);
3 (2) in subsection (c), by striking “(6), or (15)”
4 each place it appears and inserting “or (6)”; and
5 (3) in paragraph (15), as added by Public Law
6 103–394 (108 Stat. 4133)—
7 (A) by inserting “to a spouse, former
8 spouse, or child of the debtor and” before “not
9 of the kind”;
10 (B) by inserting “or” after “court of
11 record,”; and
12 (C) by striking “unless—” and all that fol-
13 lows through the end of the paragraph and in-
14 serting a semicolon.

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

16 Section 522 of title 11, United States Code, is
17 amended—

- 18 (1) in subsection (c), by striking paragraph (1)
19 and inserting the following:

20 “(1) a debt of a kind specified in paragraph (1)
21 or (5) of section 523(a) (in which case, notwith-
22 standing any provision of applicable nonbankruptcy
23 law to the contrary, such property shall be liable for
24 a debt of a kind specified in section 523(a)(5));”;

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

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

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

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

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

15 **SEC. 218. DISPOSABLE INCOME DEFINED.**

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

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

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

24 (1) in subsection (a)—

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

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

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

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

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

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

13 “(A)(i) provide written notice to the holder of
14 the claim described in subsection (a)(10) of such
15 claim and of the right of such holder to use the serv-
16 ices of the State child support enforcement agency
17 established under sections 464 and 466 of the Social
18 Security Act for the State in which such holder re-
19 sides, for assistance in collecting child support dur-
20 ing and after the case under this title;

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

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

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

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

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

13 “(i) the granting of the discharge;

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

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

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

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

22 or

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

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

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

11 (b) DUTIES OF TRUSTEE UNDER CHAPTER 11.—
12 Section 1106 of title 11, United States Code, is
13 amended—

14 (1) in subsection (a)—

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

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

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

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

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

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

1 “(A)(i) provide written notice to the holder of
2 the claim described in subsection (a)(8) 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; and

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

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

14 “(ii) include in the notice required by clause (i)
15 the name, address, and telephone number of such
16 holder; and

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

21 “(i) the granting of the discharge;

22 “(ii) the last recent known address of the
23 debtor;

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

1 “(iv) the name of each creditor that holds
2 a claim that—

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

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

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

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

18 (c) DUTIES OF TRUSTEE UNDER CHAPTER 12.—
19 Section 1202 of title 11, United States Code, is
20 amended—

21 (1) in subsection (b)—

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

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

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

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

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

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

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

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

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

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

24 “(C) at such time as the debtor is granted a
25 discharge under section 1228, provide written notice

1 to such holder and to such State child support en-
2 forcement agency of—

3 “(i) the granting of the discharge;

4 “(ii) the last recent known address of the
5 debtor;

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

8 “(iv) the name of each creditor that holds
9 a claim that—

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

12 or

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

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

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

1 (d) DUTIES OF TRUSTEE UNDER CHAPTER 13.—
2 Section 1302 of title 11, United States Code, is
3 amended—

4 (1) in subsection (b)—

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

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

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

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

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

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

16 “(A)(i) provide written notice to the holder of
17 the claim described in subsection (b)(6) of such
18 claim and of the right of such holder to use the serv-
19 ices of the State child support enforcement agency
20 established under sections 464 and 466 of the Social
21 Security Act for the State in which such holder re-
22 sides, for assistance in collecting child support dur-
23 ing and after the case under this title; and

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

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

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

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

13 “(i) the granting of the discharge;

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

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

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

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

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

24 “(2)(A) The holder of a claim described in subsection
25 (b)(6) or the State child support enforcement agency of

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

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

9 **SEC. 220. NONDISCHARGEABILITY OF CERTAIN EDU-**
 10 **CATIONAL BENEFITS AND LOANS.**

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

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

18 “(A)(i) an educational benefit overpayment
 19 or loan made, insured, or guaranteed by a gov-
 20 ernmental unit, or made under any program
 21 funded in whole or in part by a governmental
 22 unit or nonprofit institution; or

23 “(ii) an obligation to repay funds received
 24 as an educational benefit, scholarship, or sti-
 25 pend; or

1 “(B) any other educational loan that is a
 2 qualified education loan, as defined in section
 3 221(d)(1) of the Internal Revenue Code of
 4 1986, incurred by a debtor who is an indi-
 5 vidual;”.

6 **Subtitle C—Other Consumer** 7 **Protections**

8 **SEC. 221. AMENDMENTS TO DISCOURAGE ABUSIVE BANK-** 9 **RUPTCY FILINGS.**

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

12 (1) in subsection (a)(1), by striking “or an em-
 13 ployee of an attorney” and inserting “for the debtor
 14 or an employee of such attorney under the direct su-
 15 pervision of such attorney”;

16 (2) in subsection (b)—

17 (A) in paragraph (1), by adding at the end
 18 the following: “If a bankruptcy petition pre-
 19 parer is not an individual, then an officer, prin-
 20 cipal, responsible person, or partner of the
 21 bankruptcy petition preparer shall be required
 22 to—

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

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

4 (B) by striking paragraph (2) and insert-
5 ing the following:

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

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

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

16 “(ii) may contain a description of examples of
17 legal advice that a bankruptcy petition preparer is
18 not authorized to give, in addition to any advice that
19 the preparer may not give by reason of subsection
20 (e)(2); and

21 “(iii) shall—

22 “(I) be signed by the debtor and, under
23 penalty of perjury, by the bankruptcy petition
24 preparer; and

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

3 (3) in subsection (c)—

4 (A) in paragraph (2)—

5 (i) by striking “(2) For purposes” and
6 inserting “(2)(A) Subject to subparagraph
7 (B), for purposes”; and

8 (ii) by adding at the end the fol-
9 lowing:

10 “(B) If a bankruptcy petition preparer is not an indi-
11 vidual, the identifying number of the bankruptcy petition
12 preparer shall be the Social Security account number of
13 the officer, principal, responsible person, or partner of the
14 bankruptcy petition preparer.”; and

15 (B) by striking paragraph (3);

16 (4) in subsection (d)—

17 (A) by striking “(d)(1)” and inserting
18 “(d)”; and

19 (B) by striking paragraph (2);

20 (5) in subsection (e)—

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

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

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

- 1 “(B) The legal advice referred to in subparagraph
2 (A) includes advising the debtor—
3 “(i) whether—
4 “(I) to file a petition under this title; or
5 “(II) commencing a case under chapter 7,
6 11, 12, or 13 is appropriate;
7 “(ii) whether the debtor’s debts will be dis-
8 charged in a case under this title;
9 “(iii) whether the debtor will be able to retain
10 the debtor’s home, car, or other property after com-
11 mencing a case under this title;
12 “(iv) concerning—
13 “(I) the tax consequences of a case
14 brought under this title; or
15 “(II) the dischargeability of tax claims;
16 “(v) whether the debtor may or should promise
17 to repay debts to a creditor or enter into a reaffir-
18 mation agreement with a creditor to reaffirm a debt;
19 “(vi) concerning how to characterize the nature
20 of the debtor’s interests in property or the debtor’s
21 debts; or
22 “(vii) concerning bankruptcy procedures and
23 rights.”;
24 (6) in subsection (f)—

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

3 (B) by striking paragraph (2);
4 (7) in subsection (g)—

5 (A) by striking “(g)(1)” and inserting
6 “(g)”; and

7 (B) by striking paragraph (2);
8 (8) in subsection (h)—

9 (A) by redesignating paragraphs (1)
10 through (4) as paragraphs (2) through (5), re-
11 spectively;

12 (B) by inserting before paragraph (2), as
13 so redesignated, the following:

14 “(1) The Supreme Court may promulgate rules under
15 section 2075 of title 28, or the Judicial Conference of the
16 United States may prescribe guidelines, for setting a max-
17 imum allowable fee chargeable by a bankruptcy petition
18 preparer. A bankruptcy petition preparer shall notify the
19 debtor of any such maximum amount before preparing any
20 document for filing for a debtor or accepting any fee from
21 the debtor.”;

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

23 (i) by striking “Within 10 days after
24 the date of the filing of a petition, a bank-

1 ruptcy petition preparer shall file a” and
2 inserting “A”;

3 (ii) by inserting “by the bankruptcy
4 petition preparer shall be filed together
5 with the petition,” after “perjury”; and

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

15 (D) by striking paragraph (3), as so redes-
16 ignated, and inserting the following:

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

21 “(i) rendered by the bankruptcy petition pre-
22 parer during the 12-month period immediately pre-
23 ceding the date of the filing of the petition; or

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

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

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

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

15 (9) in subsection (i)(1), by striking the matter
16 preceding subparagraph (A) and inserting the fol-
17 lowing:

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

25 (10) in subsection (j)—

1 (A) in paragraph (2)—

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

5 (ii) in subparagraph (B)—

6 (I) by striking “or has not paid
7 a penalty” and inserting “has not
8 paid a penalty”; and

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

13 (B) by redesignating paragraph (3) as
14 paragraph (4); and

15 (C) by inserting after paragraph (2) the
16 following:

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

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

24 “(l)(1) A bankruptcy petition preparer who fails to
25 comply with any provision of subsection (b), (c), (d), (e),

1 (f), (g), or (h) may be fined not more than \$500 for each
2 such failure.

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

6 “(A) advised the debtor to exclude assets or in-
7 come that should have been included on applicable
8 schedules;

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

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

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

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

20 “(4)(A) Fines imposed under this subsection in judi-
21 cial districts served by United States trustees shall be paid
22 to the United States trustee, who shall deposit an amount
23 equal to such fines in a special account of the United
24 States Trustee System Fund referred to in section
25 586(e)(2) of title 28. Amounts deposited under this sub-

1 paragraph shall be available to fund the enforcement of
2 this section on a national basis.

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

11 **SEC. 222. SENSE OF CONGRESS.**

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

15 **SEC. 223. ADDITIONAL AMENDMENTS TO TITLE 11, UNITED**
16 **STATES CODE.**

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

20 “(10) Tenth, allowed claims for death or per-
21 sonal injury resulting from the operation of a motor
22 vehicle or vessel if such operation was unlawful be-
23 cause the debtor was intoxicated from using alcohol,
24 a drug, or another substance.”.

1 **SEC. 224. PROTECTION OF RETIREMENT SAVINGS IN BANK-**
 2 **RUPTCY.**

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

5 (1) in subsection (b)—

6 (A) in paragraph (2)—

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

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

12 (iii) by adding at the end the fol-
 13 lowing:

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

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

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

22 “(A) any property”;

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

25 “(2) Property listed in this paragraph is property
 26 that is specified under subsection (d), unless the State law

1 that is applicable to the debtor under paragraph (3)(A)
2 specifically does not so authorize.”;

3 (C) by striking “(b) Notwithstanding” and
4 inserting “(b)(1) Notwithstanding”;

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

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

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

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

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

13 “(A) If the retirement funds are in a retirement
14 fund that has received a favorable determination
15 under section 7805 of the Internal Revenue Code of
16 1986, and that determination is in effect as of the
17 date of the filing of the petition in a case under this
18 title, those funds shall be presumed to be exempt
19 from the estate.

20 “(B) If the retirement funds are in a retirement
21 fund that has not received a favorable determination
22 under such section 7805, those funds are exempt
23 from the estate if the debtor demonstrates that—

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

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

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

12 “(C) A direct transfer of retirement funds from
13 1 fund or account that is exempt from taxation
14 under section 401, 403, 408, 408A, 414, 457, or
15 501(a) of the Internal Revenue Code of 1986, under
16 section 401(a)(31) of the Internal Revenue Code of
17 1986, or otherwise, shall not cease to qualify for ex-
18 emption under paragraph (3)(C) or subsection
19 (d)(12) by reason of such direct transfer.

20 “(D)(i) Any distribution that qualifies as an eli-
21 gible rollover distribution within the meaning of sec-
22 tion 402(c) of the Internal Revenue Code of 1986 or
23 that is described in clause (ii) shall not cease to
24 qualify for exemption under paragraph (3)(C) or
25 subsection (d)(12) by reason of such distribution.

1 “(ii) A distribution described in this clause is
2 an amount that—

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

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

11 (2) in subsection (d)—

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

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

16 “(12) 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.”.

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

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

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

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

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

15 “(A) to the extent that the amounts with-
16 held and collected are used solely for payments
17 relating to a loan from a plan under section
18 408(b)(1) of the Employee Retirement Income
19 Security Act of 1974 or is 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;”.

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

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

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

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

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

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

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

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

11 (e) ASSET LIMITATION.—

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

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

1 amount may be increased if the interests of justice so re-
2 quire.”.

3 (2) ADJUSTMENT OF DOLLAR AMOUNTS.—

4 Paragraphs (1) and (2) of section 104(b) of title 11,
5 United States Code, are amended by inserting
6 “522(n),” after “522(d),”.

7 **SEC. 225. PROTECTION OF EDUCATION SAVINGS IN BANK-**
8 **RUPTCY.**

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

11 (1) in subsection (b)—

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

14 (B) by redesignating paragraph (5) as
15 paragraph (9); and

16 (C) by inserting after paragraph (4) the
17 following:

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

23 “(A) only if the designated beneficiary of
24 such account was a child, stepchild, grandchild,
25 or stepgrandchild of the debtor for the taxable

1 year for which funds were placed in such ac-
2 count;

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

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

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

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

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

22 “(A) only if the designated beneficiary of
23 the amounts paid or contributed to such tuition
24 program was a child, stepchild, grandchild, or

1 stepgrandchild of the debtor for the taxable
2 year for which funds were paid or contributed;

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

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

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

22 “(e) In determining whether any of the relationships
23 specified in paragraph (5)(A) or (6)(A) of subsection (b)
24 exists, a legally adopted child of an individual (and a child
25 who is a member of an individual’s household, if placed

1 with such individual by an authorized placement agency
 2 for legal adoption by such individual), or a foster child
 3 of an individual (if such child has as the child’s principal
 4 place of abode the home of the debtor and is a member
 5 of the debtor’s household) shall be treated as a child of
 6 such individual by blood.”.

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

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

17 **SEC. 226. DEFINITIONS.**

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

20 (1) by inserting after paragraph (2) the fol-
 21 lowing:

22 “(3) ‘assisted person’ means any person whose
 23 debts consist primarily of consumer debts and the
 24 value of whose nonexempt property is less than
 25 \$150,000;”;

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

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

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

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

19 “(A) any person who is an officer, director,
20 employee, or agent of a person who provides
21 such assistance or of the bankruptcy petition
22 preparer;

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

1 “(C) a creditor of such assisted person, to
2 the extent that the creditor is assisting such as-
3 sisted person to restructure any debt owed by
4 such assisted person to the creditor;

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

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

15 (b) CONFORMING AMENDMENT.—Section 104(b) of
16 title 11, United States Code, is amended by inserting
17 “101(3),” after “sections” each place it appears.

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

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

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

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

24 “(1) fail to perform any service that such agen-
25 cy informed an assisted person or prospective as-

1 sisted person it would provide in connection with a
2 case or proceeding under this title;

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

10 “(3) misrepresent to any assisted person or pro-
11 spective assisted person, directly or indirectly, af-
12 firmatively or by material omission, with respect
13 to—

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

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

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

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

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

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

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

22 “(B) provided bankruptcy assistance to an as-
23 sisted person in a case or proceeding under this title
24 that is dismissed or converted to a case under an-
25 other chapter of this title because of such agency’s

1 intentional or negligent failure to file any required
2 document including those specified in section 521; or

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

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

12 “(A) may bring an action to enjoin such viola-
13 tion;

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

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

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

1 “(5) Notwithstanding any other provision of Federal
2 law and in addition to any other remedy provided under
3 Federal or State law, if the court, on its own motion or
4 on the motion of the United States trustee or the debtor,
5 finds that a person intentionally violated this section, or
6 engaged in a clear and consistent pattern or practice of
7 violating this section, the court may—

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

9 “(B) impose an appropriate civil penalty
10 against such person.

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

13 “(1) annul, alter, affect, or exempt any person
14 subject to such sections from complying with any
15 law of any State except to the extent that such law
16 is inconsistent with those sections, and then only to
17 the extent of the inconsistency; or

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

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

1 “(B) of a Federal court to determine and
2 enforce the qualifications for the practice of law
3 before that court.”.

4 (b) CONFORMING AMENDMENT.—The table of sec-
5 tions for chapter 5 of title 11, United States Code, is
6 amended by inserting after the item relating to section
7 525, the following:

 “526. Restrictions on debt relief agencies.”.

8 **SEC. 228. DISCLOSURES.**

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

12 **“§ 527. Disclosures**

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

15 “(1) the written notice required under section
16 342(b)(1); and

17 “(2) to the extent not covered in the written no-
18 tice described in paragraph (1), and not later than
19 3 business days after the first date on which a debt
20 relief agency first offers to provide any bankruptcy
21 assistance services to an assisted person, a clear and
22 conspicuous written notice advising assisted persons
23 that—

24 “(A) all information that the assisted per-
25 son is required to provide with a petition and

1 thereafter during a case under this title is re-
2 quired to be complete, accurate, and truthful;

3 “(B) all assets and all liabilities are re-
4 quired to be completely and accurately disclosed
5 in the documents filed to commence the case,
6 and the replacement value of each asset as de-
7 fined in section 506 must be stated in those
8 documents where requested after reasonable in-
9 quiry to establish such value;

10 “(C) current monthly income, the amounts
11 specified in section 707(b)(2), and, in a case
12 under chapter 13 of this title, disposable income
13 (determined in accordance with section
14 707(b)(2)), are required to be stated after rea-
15 sonable inquiry; and

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

22 “(b) A debt relief agency providing bankruptcy assist-
23 ance to an assisted person shall provide each assisted per-
24 son at the same time as the notices required under sub-
25 section (a)(1) the following statement, to the extent appli-

1 cable, or one substantially similar. The statement shall be
2 clear and conspicuous and shall be in a single document
3 separate from other documents or notices provided to the
4 assisted person:

5 “‘IMPORTANT INFORMATION ABOUT BANK-
6 RUPTCY ASSISTANCE SERVICES FROM AN AT-
7 TORNEY OR BANKRUPTCY PETITION PRE-
8 PARER.

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

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

23 “‘Before filing a bankruptcy case, either you or your
24 attorney should analyze your eligibility for different forms
25 of debt relief available under the Bankruptcy Code and

1 which form of relief is most likely to be beneficial for you.
2 Be sure you understand the relief you can obtain and its
3 limitations. To file a bankruptcy case, documents called
4 a Petition, Schedules and Statement of Financial Affairs,
5 as well as in some cases a Statement of Intention need
6 to be prepared correctly and filed with the bankruptcy
7 court. You will have to pay a filing fee to the bankruptcy
8 court. Once your case starts, you will have to attend the
9 required first meeting of creditors where you may be ques-
10 tioned by a court official called a ‘trustee’ and by credi-
11 tors.

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

16 “‘If you choose to file a chapter 13 case in which
17 you repay your creditors what you can afford over 3 to
18 5 years, you may also want help with preparing your chap-
19 ter 13 plan and with the confirmation hearing on your
20 plan which will be before a bankruptcy judge.

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

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

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

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

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

4 “(3) how to determine what property is exempt
5 and how to value exempt property at replacement
6 value as defined in section 506.

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

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

“527. Disclosures.”.

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

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

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

20 “(a) A debt relief agency shall—

21 “(1) not later than 5 business days after the
22 first date on which such agency provides any bank-
23 ruptcy assistance services to an assisted person, but
24 prior to such assisted person’s petition under this
25 title being filed, execute a written contract with such

1 assisted person that explains clearly and
2 conspicuously—

3 “(A) the services such agency will provide
4 to such assisted person; and

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

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

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

16 “(4) clearly and conspicuously use the following
17 statement in such advertisement: ‘We are a debt re-
18 lief agency. We help people file for bankruptcy relief
19 under the Bankruptcy Code.’ or a substantially simi-
20 lar statement.

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

24 “(A) descriptions of bankruptcy assistance in
25 connection with a chapter 13 plan whether or not

1 chapter 13 is specifically mentioned in such adver-
2 tisement; and

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

11 “(2) An advertisement, directed to the general public,
12 indicating that the debt relief agency provides assistance
13 with respect to credit defaults, mortgage foreclosures, evic-
14 tion proceedings, excessive debt, debt collection pressure,
15 or inability to pay any consumer debt shall—

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

19 “(B) include the following statement: ‘We are a
20 debt relief agency. We help people file for bank-
21 ruptcy relief under the Bankruptcy Code.’ or a sub-
22 stantially similar statement.”.

23 (b) CONFORMING AMENDMENT.—The table of sec-
24 tions for chapter 5 of title 11, United States Code, as

1 amended by section 227 and 228, is amended by inserting
2 after the item relating to section 527, the following:

“528. Requirements for debt relief agencies.”.

3 **SEC. 230. GAO STUDY.**

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

17 (b) **REPORT.**—Not later than 300 days after the date
18 of enactment of this Act, the Comptroller General shall
19 submit to the President pro tempore of the Senate and
20 the Speaker of the House of Representatives a report con-
21 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
12 contributions—

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
 19 jurisdiction—

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
6 amended—

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 “(i) the date that is 120 days after the date of
2 the order for relief; or

3 “(ii) the date of the entry of an order con-
4 firming a plan.

5 “(B)(i) The court may extend the period determined
6 under subparagraph (A), prior to the expiration of the
7 120-day period, for 90 days on the motion of the trustee
8 or lessor for cause.

9 “(ii) If the court grants an extension under clause
10 (i), the court may grant a subsequent extension only upon
11 prior written consent of the lessor in each instance.”.

12 (b) EXCEPTION.—Section 365(f)(1) of title 11,
13 United States Code, is amended by striking “subsection”
14 the first place it appears and inserting “subsections (b)
15 and”.

16 **SEC. 405. CREDITORS AND EQUITY SECURITY HOLDERS**
17 **COMMITTEES.**

18 (a) APPOINTMENT.—Section 1102(a) of title 11,
19 United States Code, is amended by adding at the end the
20 following:

21 “(4) On request of a party in interest and after notice
22 and a hearing, the court may order the United States
23 trustee to change the membership of a committee ap-
24 pointed under this subsection, if the court determines that
25 the change is necessary to ensure adequate representation

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 uidating 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
21 period—

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
2 satisfactorily—

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
19 beyond—

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 “(b) The petition commencing a case under sub-
2 section (a) must be accompanied by a certified copy of
3 an order granting recognition. The court where the peti-
4 tion for recognition has been filed must be advised of the
5 foreign representative’s intent to commence a case under
6 subsection (a) prior to such commencement.

7 **“§ 1512. Participation of a foreign representative in a
8 case under this title**

9 “Upon recognition of a foreign proceeding, the for-
10 eign representative in the recognized proceeding is entitled
11 to participate as a party in interest in a case regarding
12 the debtor under this title.

13 **“§ 1513. Access of foreign creditors to a case under
14 this title**

15 “(a) Foreign creditors have the same rights regarding
16 the commencement of, and participation in, a case under
17 this title as domestic creditors.

18 “(b)(1) Subsection (a) does not change or codify
19 present law as to the priority of claims under section 507
20 or 726, except that the claim of a foreign creditor under
21 those sections shall not be given a lower priority than that
22 of general unsecured claims without priority solely because
23 the holder of such claim is a foreign creditor.

24 “(2)(A) Subsection (a) and paragraph (1) do not
25 change or codify present law as to the allowability of for-

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 “(d) The court may not enjoin a police or regulatory
2 act of a governmental unit, including a criminal action or
3 proceeding, under this section.

4 “(e) The standards, procedures, and limitations ap-
5 plicable to an injunction shall apply to relief under this
6 section.

7 “(f) The exercise of rights not subject to the stay
8 arising under section 362(a) pursuant to paragraph (6),
9 (7), (17), or (27) of section 362(b) or pursuant to section
10 362(n) shall not be stayed by any order of a court or ad-
11 ministrative agency in any proceeding under this chapter.

12 **“§ 1520. Effects of recognition of a foreign main pro-**
13 **ceeding**

14 “(a) Upon recognition of a foreign proceeding that
15 is a foreign main proceeding—

16 “(1) sections 361 and 362 apply with respect to
17 the debtor and the property of the debtor that is
18 within the territorial jurisdiction of the United
19 States;

20 “(2) sections 363, 549, and 552 apply to a
21 transfer of an interest of the debtor in property that
22 is within the territorial jurisdiction of the United
23 States to the same extent that the sections would
24 apply to property of an estate;

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,
16 including—

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
17 amended—

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
7 proceeding—

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-
9 minate, liquidate, or net such contract
10 under paragraph (8)(A) of this subsection
11 or section 403 or 404 of the Federal De-
12 posit Insurance Corporation Improvement
13 Act of 1991, solely by reason of or inci-
14 dental 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-
22 uidating agent; or

23 “(II) after the person has re-
24 ceived 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).”;

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 ‘contrac-
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-
6 modity 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-
15 modity 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-
19 modity Exchange Act), a multilateral clearing organiza-
20 tion (as defined in the Federal Deposit Insurance Cor-
21 poration 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 serting “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 serting 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;”;

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 pro-
17 cess 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
25 California—

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
23 Florida—

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
3 Procedure—

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
15 amended—

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)”.

Passed the Senate March 10, 2005.

Attest:

Secretary.

109TH CONGRESS
1ST SESSION

S. 256

AN ACT

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