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Senate Adopts Anti-Consumer Bankruptcy Bill

The Senate gave overwhelming approval in February to legislation that would restrict the ability of financially strapped Americans to make a fresh start in bankruptcy.

"The Senate bankruptcy bill is a triumph for the credit card industry but a disaster for consumers who responsibly use the bankruptcy system," said CFA Chairman Sen. Howard Metzenbaum (Ret.). "It will deny many families in financial crisis a fresh start while spurring more reckless and irresponsible lending by credit card issuers."

Like the bill adopted by the House last May, S. 625 would impose a new, rigid means test on debtors seeking to file under Chapter 7, which allows them to discharge certain unsecured debts.

Also like the House bill, but unlike the bill adopted by the Senate in 1998, it does virtually nothing to reign in the abusive creditor practices that help lead consumers into insupportable debt.

Missing this time around is a provision requiring credit card issuers to provide debtor-specific information to consumers on their credit card billing statements about how long it would take them to pay off their balance making only minimum required payments and what their total costs would be.

Instead, S. 625 allows lenders to get by with only a very general statement on credit card bills about the potential dangers of paying off balances at the minimum rate, accompanied by a toll-free number that consumers can call for more information.

"Unlike the Senate's 1998 bill, this legislation does not provide Americans with meaningful information to help them avoid bankruptcy," said CFA Legislative Director Travis Plunkett.

"This is just one example of how the Senate bill fails to balance responsibility between working families and creditors whose practices have contributed to the rise in bankruptcies," he said.

Other amendments to address lending abuses were also defeated on the Senate floor, including proposals: to stem the extension of credit cards to minors who lack adequate income to repay the debt, to prevent high-cost mortgage lenders who violate the Truth-in-Lending Act from collecting these claims in bankruptcy court, and to prohibit bankruptcy collection of usurious loans, such as payday loans, with APRs of more than 100 percent.

During its consideration, the Senate did adopt some amendments that made modest improvements in the bill, including measures to:

- cap the value of homes that can be excluded from bankruptcy;
- make the Chapter 7 means test somewhat less rigid;
- prevent the termination of credit card accounts because consumers pay off their balance every month;
- lessen some of the paperwork requirements for bankruptcy filings; and
- require better disclosure of introductory "teaser" credit card interest rates.

These modest improvements, while worth retaining, do not begin to outweigh the bill's short-comings, Plunkett said.

The bill creates many new types of non-dischargeable debts to credit card companies, in both chapter 7 and chapter 13. Furthermore, it allows creditors to pressure debtors into agreeing to remain legally liable for more consumer debts by threatening to repossess essential appliances, such as refrigerators and washers.

The Senate rejected an amendment to ensure that, in this intensified competition for the debtor's limited resources, parents and children owed support payments will prevail over the sophisticated collection departments of creditors.

Furthermore, despite improvements made on the floor, the means test to determine who may file under Chapter 7 remains arbitrary and inflexible.

Based on IRS standards not drafted for bankruptcy purposes, it does not take into account individual family needs for expenses like transportation, food, and rent. Worse, it disfavors renters and individuals who rely on public transportation and unduly benefits higher income individuals with more property and debts.

Finally, S. 625 imposes onerous legal and paperwork burdens that would disadvantage cash-strapped families who cannot afford a lawyer.

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"Consumer organizations do not oppose legislation targeted to eliminate real bankruptcy abuses," said Sen. Metzenbaum, "but the broad barriers in this bill will harm many Americans.

"It looks like it will be up to the president to send Congress back to the drawing board to come up with a bankruptcy bill that meets the basic test of fairness and balance," he said.

Merger Spotlights Need for Broadband Access

When Internet provider American Online (AOL) announced in January that it plans to acquire media giant Time Warner, the announcement prompted calls from a variety of quarters for new protections to ensure competition among Internet service providers.

Despite pledges that the new company would keep its networks open to rivals, consumer groups and lawmakers alike expressed concern over the merger's potential anti-competitive effects.

"Consumers do not want to be beholden to a giant media-Internet dictatorship, even if it promises to be a benevolent one," CFA and Consumers Union remarked in a joint statement on the proposed merger.

The proposed merger follows closely on the heels of AT&T's acquisition of TCI Cablevision and MediaOne.

If both mergers are allowed to go forward, these two giant companies would control systems serving 60 percent of cable subscribers, 80 percent of broadband Internet subscribers, and 50 percent of narrowband Internet subscribers.

"This is the sad result of the Clinton Administration's weak competition policy, which has allowed enormous consolidations that are likely to leave consumers with fewer choices, limited competition, and higher prices," the consumer groups stated.

FCC Urged to Initiate Open Access Rule-making

In response to the proposed merger, CFA and Consumers Union announced that they would ask the Federal Communications Commission (FCC) to initiate a rule-making to require open access to cable lines for broadband Internet Service Providers.

This is necessary because the owners of the cable lines, which also own content services, have both incentives to discriminate against independent rivals and the means to do so, said CFA Research Director Mark Cooper.

In a report released in December, Cooper outlined the various means cable companies could use "to disadvantage competitors who are dependent on them to serve the public."

Independent service providers must depend on the network owners to provide them with connections between networks that are compatible and of high quality.

Because the network owner has the ability to filter or control the flow of information, however, it can give priority to its affiliate's data and ensure higher quality.

The network owner also is in a position to impose restrictions on service providers and consumers, potentially using these restrictions to gain competitive advantage.

As a result, even if independent providers are allowed to provide services on technologically fair grounds, the network owner can impose business relationships that make it difficult, if not impossible, to compete.

Finally, the network owner will have unfair advantages in the areas of information (which it gathers to monitor activity on its network but can use for other purposes), pricing, product bundling, and customer relationships, all of which can be exploited to gain a competitive advantage.

So far, the FCC has relied on private negotiations between AT&T and Internet companies to address these concerns, with entirely inadequate results, Cooper said.

The deal offered by AT&T as a result of those negotiations is not pro-competitive, because AT&T retains the power to discriminate in technological and economic ways, and independent Internet service providers are required to wait until AT&T's current exclusionary contracts expire before gaining access to consumers.

"This is not open access," Cooper said. "It leaves the facility owner in control of the customer and undermines the open, decentralized nature of the Internet."

"Only public policy action, not private negotiations can ensure that nondiscriminatory access to cable-based broadband facilities is enforceable," he said.

Pressure Mounts for Congress to Act

"With mounting evidence that the public interest in open highways of commerce and a free-flowing marketplace of ideas cannot be left to the commercial interests of these giant corporations, the pressure for Congress to act is growing," Cooper said.

Unfortunately, he said, although several bills have been introduced that address the topic, none provides the comprehensive open access policy that is needed.

The bill that has gained the most support, H.R. 2420, introduced by Rep. W.J. "Billy" Tauzin (D-LA) and Rep. John Dingell (D-MI), would not solve the broadband open access problem and would remove important incentives for regional Bell companies to open local telephone markets to local competition, he said.

Additional information on open access is available on CFA's website at www.consumerfed.org.

Health and Safety Update:

CPSC Adopts Bunk Bed Safety Rule

In a major victory for consumers, the Consumer Product Safety Commission (CPSC) voted in December to finalize a mandatory rule making bunk beds safer for children.

The 2-1 vote to promulgate a final rule caps 13 years of CFA advocacy on the issue.

"CPSC has taken a very positive step forward for American families in addressing fatal entrapment hazards in bunk beds," said CFA General Counsel Mary Ellen Fise. "This long-awaited rule will help assure that bunk beds are not death traps for their young occupants."

In 1986, CFA filed a petition with CPSC requesting a mandatory standard to address entrapment deaths to children. Although there had already been 75 entrapment deaths at that time, the commission denied the petition, choosing instead to rely on a voluntary standard.

Since the mid-1980s, bunk beds have been associated with more than 100 entrapment deaths to young children, or about ten a year, and many more "near miss" entrapment incidents, according to CPSC data.

Throughout this period, CFA has consistently argued that compliance with the voluntary standard has been inadequate and that a mandatory standard is therefore needed.

CPSC's own investigations have documented that problem, Fise noted.

Over the last four years, the Commission has identified at least 44 different manufacturers of bunk beds in violation of the voluntary standard. Those violations have necessitated product recalls involving more than half a million bunk beds.

Furthermore, CPSC's most recent review found that nearly 40 percent of those examined were in violation of the voluntary standard.

"After years of study, and too many deaths, CPSC has finally taken action," Fise said. "We applaud Chairman Brown and Commissioner Moore for their support of a mandatory rule."

USDA To Appeal Supreme Beef Decision

The U.S. Department of Agriculture has asked a U.S. District Court in Texas for a summary judgement upholding the agency's ability to enforce key food safety rules.

In December, U.S. District Court Judge Joe A. Fish issued a ruling prohibiting the agency from withdrawing inspection from Supreme Beef Processors, Inc. – and thus effectively shutting the processing plant down – despite the fact that the plant had failed USDA's salmonella testing program three times.

The ruling calls into question USDA's ability to enforce the salmonella testing provisions of the Pathogen Reduction/Hazard Analysis Critical Control Point (PR/HACCP) rule.

"No company has a right to sell unsafe meat or poultry to the public, and no judge should allow a meat plant that cannot comply with safety standards to carry the USDA seal of approval," said Carol Tucker Foreman, Director of CFA's Food Policy Institute.

"In allowing Supreme Beef to continue in business despite its failure to meet the food safety standard, Judge Fish has placed consumers in jeopardy, undermined public confidence in the meat supply, and subjected all of the companies that do comply to an unfair competitive disadvantage," she added.

The Centers for Disease Control estimates that salmonella causes over 1.4 million cases of food poisoning each year, as well as more than 16 thousand hospitalizations and 555 deaths.

Under USDA's new PR/HACCP inspection system, a plant that fails to meet the salmonella reduction standard is given three chances to come into compliance.

Although more than 90 percent of plants in the program have managed to comply with the rule, Supreme Beef failed the test three times by large margins, "indicating it is either not willing or not able to produce a product that meets a reasonable public health standard," Foreman said.

CFA has filed an amicus brief in support of USDA's position. A decision is expected before May, when the trial is scheduled to begin.

Low Limit on Arsenic in Drinking Water Urged

As the Environmental Protection Agency (EPA) prepares to issue a revised standard for arsenic in drinking water, CFA and 31 other consumer groups wrote to the agency in January urging that the limit be set at no more than two to three parts per billion (ppb).

The current maximum contaminant level of 50 ppb results in an estimated cancer risk of one in 100, according to a 1999 report by the National Academy of Sciences (NAS).

"That is a 10,000 times greater risk than EPA usually seeks to achieve when regulating chemical residues in food," noted CFA Public Policy Associate Diana Neidle.

As it develops its proposed standard, the groups urged EPA to fully assess "all of the quantifiable and non-quantifiable effects of all known and reasonably expected health effects, including information on lung cancer and other fatal and non-fatal cancers as well as serious skin and vascular disease associated with arsenic exposure."

Otherwise, "the cost-benefit approach could lead the agency to set a standard that will not protect public health," the groups warned.

They also urged EPA to increase research on arsenic's effects on young children, pregnant women, and people with poor nutrition.

Although the two to three ppb limit recommended by the consumer groups is the lowest level at which standard lab results for arsenic are currently thought to be accurate, the NAS estimates that, even at this level, total cancer risk would still be about one in 5,000.

"While this level of risk is still too high, we hope that advances in testing technologies will enable EPA to more effectively protect public health in the future," the groups wrote.

EPA is expected to issue its proposed revised standard in late February or early March.

Advisory Committee Created for Genetically Engineered Foods

The USDA has established an advisory committee on agricultural biotechnology and has appointed Foreman as one of 35 members representing a broad spectrum of views on the issue.

The committee's first meeting is scheduled for March.

Foreman had urged creation of such a committee in testimony before the Food and Drug Administration in late November.

Americans have become increasingly concerned about genetically engineered (GE) foods because of the potential for health risks and the absence of any consumer benefit from the GE foods now on the market, Foreman said.

In addition, she said, there is a sense that government has been too sensitive to the needs of industry and too reluctant to invest in adequate regulation of such foods.

"The process began under a cloud of political influence peddling and managerial bean counting, and FDA has done nothing to dispel that cloud," she said.

Foreman also suggested that an independent scientific research institute be established to sponsor research into regulatory questions concerning GE foods.

She cited as an appropriate model the Health Effects Institute, which helps develop data necessary for good regulatory decision making on clean air issues. Funded by government and industry, the institute is independent of both, she said.

"This type of institution is sensitive to the needs of the regulatory agency but not captive to it or industry," she said.

In the end, she said, "policy makers must balance industry's need to bring new products to market and thereby increase shareholder value and a farmer's desire to increase yield against the public's concern that this new technology has not been sufficiently examined for safety and holds no benefit for consumers."

Hawke Says Modernization Will Benefit Consumers

Although acknowledging that it doesn't do enough to protect consumer privacy, Comptroller of the Currency John Hawke, Jr. said the financial modernization bill signed into law last year should benefit consumers.

The bill brings our financial laws "into harmony with the changes already in effect in the marketplace," Hawke said in a keynote address at CFA's financial services conference in December.

He predicted that, by allowing banks to offer a full range of products and services, the bill would contribute to a "safe, sound, competitive banking system," and "increase convenience and choice and reduce the costs to consumers for financial services."

The Treasury Department has estimated that increased competition could reduce the costs of financial services by as much as five percent, or about $18 billion a year, he said.

Bill Does Not Adequately Protect Privacy

Hawke criticized the final bill, however, for not doing enough to protect consumer privacy.

Customers provide financial services firms with a wealth of information, and "they expect this information to be held in confidence, not used for profit-making purposes, at least not without their consent," he said.

Furthermore, although the act allows greater information sharing with affiliated companies than with outside firms, customers do not distinguish between affiliates and non-affiliates when it comes to privacy, he said.

If they hope to avoid stronger legislation in the future, banks should exceed the standards in the act and "compete on the quality of the privacy protections they offer," Hawke said.

He acknowledged, however, that history did not make him overly optimistic that such an approach would be widely adopted.

Esther Dyson, Chairman of EDventure Holdings, Inc. and former chair of the Electronic Frontier Foundation, expressed greater confidence that market forces could be harnassed to promote privacy and computer security.

Using the Market to Promote Data Protection

She outlined a plan that would center on requiring companies to disclose their data protection policies – both for data security and privacy – on disclosure documents they file with the Securities and Exchange Commission.

Auditors who certify the accuracy of companies' financial statements could also audit their data privacy and security policies, she said.

The point, she said, is to make good privacy and security policies something companies have to offer in order to be successful in the long run.

"Companies face liability when they are careless with data. Shareholders understand that," Dyson said.

Dyson argued against "detailed government regulations," because technology is so fast-moving. "If you put in specific government regulations, they will only protect against last year's problems," she said.

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Consumer Support Weak in 106th Congress

The first session of the 106th Congress was one of the worst on record for consumers, according to CFA's annual analysis of congressional support.

"The session was marred by often bitter partisan wrangling and produced no significant new pro-consumer laws," noted CFA Legislative Director Travis Plunkett.

"When members did manage to set aside party differences to enact legislation, it was to adopt bills that either scaled back existing consumer safeguards or offered broad new powers to industry without commensurate consumer protections," he said.

The Voting Record, released in February, is based on 12 key votes each in the House and Senate during the first session of the 106th Congress.

It recognizes 21 members of Congress – two senators and 19 representatives – as 1999 Consumer Heroes based on their excellent pro-consumer voting records during the past session.

In contrast, 12 senators and 76 representatives failed to record even one pro-consumer vote and were cited as 1999 Consumer Zeroes. (More than a third of members in both houses had no more than one pro-consumer vote.)

The report also recognizes the 10 senators with career voting records of at least 85 percent and the 31 representatives with career records of at least 90 percent as Lifetime Consumer Heroes.

They are led by Sen. Paul Wellstone (D-MN), with a career record of 91 percent, and Reps. Barbara Lee (D-CA) and John Tierney (D-MA), both with career voting records of 100 percent.

Anti-consumer Bills Adopted

Consumers did score some significant victories on important issues in the 1999 session, including House passage of strong, bipartisan managed care and campaign finance reform legislation, and Senate passage of gun safety measures and pro-consumer legislation authorizing the use of digital signatures in online transactions.

In each case, however, those victories were undermined by defeats in the opposite house.

On the other hand, Congress enacted several anti-consumer bills in the session.

These included the financial modernization bill, which allows the creation of huge financial services corporations while doing little to protect consumers' financial privacy, as well as legislation limiting companies' liability for computer failures related to the year 2000 computer bug and an extension of the Northeast Dairy Compact and repeal of the administration's milk pricing reforms.

Also disturbing was the substantial progress made toward passage of bankruptcy reform legislation. Both the bill that passed the House and the bill that was debated in the Senate would make it significantly more difficult for families in financial crisis to make a fresh start through bankruptcy. Neither attempts to reign in the abusive creditor practices that help lead families into unmanageable debt. (See related article, page 1.)

Overall Consumer Support Drops Precipitously

This dismal record on consumer legislation is reflected in the extremely low overall voting records recorded in both the House and Senate.

The average for all members dropped from 51 percent in 1998 to 37 percent in 1999 in the House and from 48 percent to 39 percent in the Senate, their lowest levels since 1979 and 1980 respectively.

Democrats and Republicans contributed about equally to the decline. Consumer support from House Democrats dropped 15 points to 64 percent, its lowest level since 1980, while consumer support among Senate Democrats dropped nine points to 72 percent.

Both House and Senate Republicans voted with consumers only 11 percent of the time in 1999, down 15 percentage points in the House and 10 percentage points in the Senate from the previous year. This is the lowest level of consumer support by Senate Republicans since CFA began compiling the Voting Record in 1971.

The one bright spot for consumers was the more pro-consumer freshman class in the Senate, which had a 52 percent average, compared with the previous year's 35 percent.

In the House, however, the drop in freshman support mirrored that of all members, with the exception that freshman Republicans in the House were even weaker in their support for consumers, at just seven percent, than House Republicans overall.

"Fortunately for members of the 106th Congress, they have another year to build a real record of achievement for American consumers," Plunkett said.

"There's no reason why Congress has to get bogged down in partisan maneuvering and political gridlock in an election year," he added. "They could use this year to deliver on key consumer issues, like financial and health privacy, electricity deregulation, and managed care patient protections."

Copies of the report are available from CFA, 1424 16th Street, N.W., Suite 604, Washington, D.C. 20036. The report is free to the press, $5 for non-profit organizations, and $10 prepaid for all others.

Texas Tort Limits Produce Few Savings

The tort law changes adopted by the Texas legislature in 1995 have failed to produce the promised savings on insurance premiums, according to a CFA report released in December.

"Restrictions on victim's legal rights do not appear to be effective in holding down insurance premiums," said CFA Director of Insurance J. Robert Hunter, author of the report, "Texas Tort Reform's Incredible Shrinking Savings."

The report documents the fact that premiums for insurance lines with a liability component were 8.2 percent higher in Texas at the end of 1998 than they were before tort reform took effect. Adjusted for population changes, liability premiums are up 2.3 percent on a per capita basis.

If you further adjust the Texas data to reflect nationwide premium changes in the same lines of insurance, relative "savings" of at most $483 million might be claimed, Hunter said, "not the alleged savings of billions claimed by the Texas Insurance Department."

Furthermore, the report shows that, nationally, states with the most severe tort law restrictions actually had higher premium increases than states with the fewest restrictions. Texas's results were statistically equivalent to those in states with modest or no tort reform restrictions.

"If these restrictions on victims rights were truly effective in lowering insurance premiums, states with the most severe forms of restrictions should show the greatest premium control, but the empirical evidence shows that this is not the case," Hunter said.

1999 CONGRESSIONAL Heroes & Zeroes

Two Senate Heroes voted with consumers on all but one vote:

Russ Feingold (D-WI)
Paul Wellstone (D-MN)

Nineteen House Heroes had no more than one anti-consumer vote, including six (marked with an asterix) with 100 percent ratings:

Dennis Kucinich (D-OH)*
Barbara Lee (D-CA)*
Janice Schakowsky (D-IL)*
Fortney "Pete" Stark (D-CA)*
John Tierney (D-MA)*
Henry Waxman (D-CA)*
Tammy Baldwin (D-WI)
Thomas Barrett (D-WI)
John Conyers, Jr. (D-MI)
William Delahunt (D-MA)
Julian Dixon (D-CA)
Lane Evans (D-IL)
Bob Filner (D-CA)
Maurice Hinchey (D-NY)
Jesse Jackson, Jr. (D-IL)
Lucille Roybal-Allard (D-CA)
Bernard Sanders (I-VT)
Maxine Waters (D-CA)
Cynthia McKinney (D-GA)

Twelve Senate Zeroes had no pro-consumer votes:

John Ashcroft (R-MO)
Christopher "Kit" Bond (R-MO)
Jim Bunning (R-KY)
Thad Cochran (R-MS)
Paul Coverdell (R-GA)
Jesse Helms (R-NC)
James Inhofe (R-OK)
Kay Bailey Hutchison (R-TX)
Trent Lott (R-MS)
Connie Mack (R-FL)
Jeff Sessions (R-AL)
Strom Thurmond (R-SC)

Seventy-six House Zeroes had no pro-consumer votes:

Robert Aderholt (R-AL)
Richard Baker (R-LA)
Cass Ballenger (R-NC)
Roscoe Bartlett (R-MD)
Thomas Bliley, Jr. (R-VA)
Roy Blunt (R-MO)
Henry Bonilla (R-TX)
Ed Bryant (R-TN)
Richard Burr (R-NC)
Dan Burton (R-IN)
Larry Combest (R-TX)
Barbara Cubin (R-WY)
Randy Cunningham (R-CA)
Jim DeMint (R-SC)
Jennifer Dunn (R-WA)
Robert Ehrlich, Jr. (R-MD)
Jo Ann Emerson (R-MO)
Philip English (R-PA)
Terry Everett (R-AL)
Ernest Lee Fletcher (R-KY)
Tillie Fowler (R-FL)
George Gekas (R-PA)
Virgil Goode, Jr. (D-VA)
Bob Goodlatte (R-VA)
Kay Granger (R-TX)
James Hansen (R-UT)
Dennis Hastert (R-IL)
Doc Hastings (R-WA)
Robin Hayes (R-NC)
J. D. Hayworth (R-AZ)
Van Hilleary (R-TN)
Peter Hoekstra (R-MI)
Asa Hutchinson (R-AR)
Johnny Isakson (R-GA)
Jack Kingston (R-GA)
Joseph Knollenberg (R-MI)
Jerry Lewis (R-CA)
Ron Lewis (R-KY)
John Linder (R-GA)
Frank Lucas (R-OK)
Jim McCrery (R-LA)
Scott McInnis (R-CO)
Gary Miller (R-CA)
Howard "Buck" McKeon (R-CA)
Sue Myrick (R-NC)
George Nethercutt, Jr. (R-WA)
Ron Packard (R-CA)
Edward Pease (R-IN)
John Peterson (R-PA)
Charles "Chip" Pickering, Jr. (R-MS)
Joseph Pitts (R-PA)
Richard Pombo (R-CA)
George Radanovich (R-CA)
Bob Riley (R-AL)
Harold Rogers (R-KY)
Joe Scarborough (R-FL)
Bob Schaffer (R-CO)
John Shadegg (R-AZ)
Bud Shuster (R-PA)
Mike Simpson (R-ID)
Joe Skeen (R-NM)
Lamar Smith (R-TX)
Cliff Stearns (R-FL)
Bob Stump (R-AZ)
John Sununu (R-NH)
James Talent (R-MO)
W. J. "Billy" Tauzin (R-LA)
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Wes Watkins (R-OK)
J.C. Watts (R-OK)
Edward Whitfield (R-KY)
Roger Wicker (R-MS)
Don Young (R-AK)

Bankruptcy Problem is Self-Correcting

Just as Congress is moving to restrict consumer access to bankruptcy, convincing evidence has emerged indicating that the bankruptcy problem is self-correcting and that legislation is simply not warranted.

According to data released by CFA in January, increasingly cautious consumer borrowing in 1999 has forced credit card issuers to reduce their marketing efforts and extension of credit.

The result, according to data compiled by economist Lawrence M. Ausubel and released by CFA, was a 9.43 percent decline in the per capita personal bankruptcy rate from the fourth quarter of 1998 to the fourth quarter of 1999. This equates to 112,000 fewer personal bankruptcies in 1999 than in 1998, the single largest one-year decline on record.

"The facts show that credit card issuers can reduce bankruptcies by lending more responsibly," Plunkett said. "Instead, lenders are aggressively pushing sweeping bankruptcy barriers that are not adequately targeted at the abuses they seek to eliminate."

"The bankruptcy bill would lead to a resurgence in the incidence of badly over-extended consumers by encouraging lenders to lower their credit standards and solicit riskier customers," concurred Professor Ausubel of the University of Maryland.

"Since the bankruptcy crisis is self-correcting, it does not require harsh legislation," he added.

According to data from BAI Global, credit card borrowers' response rate to credit card solicitations has dropped from 2.8 percent in 1992 to 1.0 percent in the first nine months of 1999, a decline of 64.3 percent.

In addition, annual increases in credit card borrowing have slowed significantly from the double-digit rates of increase experienced in the middle 1990s to just 4.9 percent from 1997 to 1998 and 5.7 percent from 1998 to 1999, according to data from the Federal Reserve Board.

Meanwhile, credit card lenders have seen net charge-offs –debt losses to outstanding debt – decline steadily over the past two years, according to data from VERIBANC. They have suffered lower debt losses both as a percentage of total debts and in absolute dollars.

A key reason for this recent reduction in debt losses is the decline from the spring of 1998 until the winter of 1999 in personal bankruptcies.

Number of Personal Bankruptcies Declines

As recent research by Professor Ausubel indicates, the number of personal bankruptcies declined from 1,397,695 in 1998 to 1,285,801 in 1999, a drop of 8.01 percent.

Moreover, Professor Ausubel's research, based on data from the Administrative Office of U.S. Courts, reveals that there has been an almost continuous decline from the second quarter of 1998 until the last quarter of 1999.

In response to several factors, including declining direct mail response rates and moderate increases in credit card debt, lenders have begun to reduce their marketing and credit extension.

Credit card mailings, the single most important way for issuers to market their plastic, increased from 3.1 billion in 1997 to 3.5 billion in 1998, but declined to 2.5 billion in the first nine months of 1999, according to BAI Global.

That projects to 3.1 billion for the entire year. But another data source recently reported a decline in fourth quarter mailings, so the number may be as low as 3.0 billion.

Even more striking is the decline, for the first time in decades, in the unused credit lines provided by bank card issuers.

According to data from VERIBANC, these lines nearly doubled from $499 billion at the end of 1992 to $954 billion at the end of 1995, then more than doubled to $2.071 trillion at the end of 1998. From the end of 1998 to the end of September 1999, however, unused credit lines actually declined to $2.046 trillion.

Minimum Payment Increase Would Accelerate Bankruptcy Decline

While personal bankruptcies should continue to decline as consumers and creditors exercise greater restraint, this decline would accelerate if credit card issuers were to phase in an increase in the minimum payment allowed from the current two to three percent to four percent, noted CFA Executive Director Stephen Brobeck.

"The decline in the typical minimum payment to two or three percent is responsible for much of the rise in consumer bankruptcies through the past decade," Brobeck said.

With a two percent minimum payment, a consumer carrying $20,000 in credit card debt makes monthly payments totaling $400.

"That low minimum payment, which barely covers interest obligations, convinces many borrowers that they are okay as long as they can meet all their minimum payment obligations," he said. "But those that cannot afford to make these payments carry so much debt that bankruptcy is usually the only viable option."

Lenders now acknowledge that they can no longer reliably predict which borrowers will end up in bankruptcy, Brobeck noted. "That is because low minimum payments allow insolvent borrowers to pay all their credit card bills on time. But, at a certain point they realize their situation is hopeless and declare bankruptcy."

Although some creditors now realize they made a mistake in dropping the minimum payment to two percent, they are reluctant to risk losing customers if they unilaterally raise their minimums, Brobeck said.

"This is why Congress would be wise to require credit card issuers to require minimum payments of at least four percent from all new customers," he said. "Despite industry criticism of such a requirement, it would be welcomed by many individual lenders."

No such requirement was included in either the House or Senate bankruptcy bill.

SEC Urged To Withdraw Anti-Investor Rule

The Securities and Exchange Commission (SEC) has proposed a rule that would expand the loophole that allows brokers to market themselves to the public as advisers while being regulated as salespeople.

Under the Investment Advisers Act, brokers who stick to product sales are regulated exclusively as salespeople, as long as they don't charge for investment advice. In a move it claims is necessary to allow brokers to offer fee-based services, the Commission now proposes to allow brokers to avoid regulation as investment advisers, even when they charge fees for advice, as long as the advice they offer is incidental to their practice as brokers, they offer the advice on a non-discretionary basis, and they disclose that the account is a brokerage account.

"Investors have a right to expect that all the financial professionals who sell them investment advice will be held to the same high standard of conduct. Brokers who want to charge for investment advice should be regulated as advisers. It's a simple as that," said CFA Director of Investor Protection Barbara Roper.

CFA filed comments in January urging the agency to withdraw the rule on the grounds that: it conflicts with the law, which clearly states that brokers who charge for investment advice are to be regulated as advisers; it is unnecessary to achieve the Commission's goal of allowing brokers to offer fee-based services without automatically triggering regulation as advisers; and it would undermine important investor protections by allowing brokers to market themselves as advisers, and charge for advice, while being held only to the lower legal standard that applies to product sales.

As salespeople, brokers are required only to make generally suitable recommendations. In contrast, investment advisers are subject to a fiduciary duty to place their clients' interest ahead of their own and to disclose any and all conflict of interest.

"Brokers today are offering advisory services that go far beyond those Congress intended to exclude from regulation under the advisers act," Roper noted. The problem, she said, is that the SEC has given brokers virtually free reign to expand their advisory services and market themselves as advisers without regulating them as advisers.

"The rule proposal is a step in the wrong direction. Instead of rectifying the existing double standard, which results from a failure of enforcement, it would open up a new loophole that would allow brokers to charge customers for advice that may be little more than a sales pitch."

CFA's comment letter is available on the CFA website at www.consumerfed.org/secbrokers.pdf.

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